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OFFICE OF PETITIONS

In re Application of	:	
Gary Dommer et al	:	
Application No. 10/085,489	:	DECISION DISMISSING PETITION
Filed: February 26, 2002	:	UNDER 37 CFR 1.55(c)
Attorney Docket No. 46522-1101	:	

This is a decision on the renewed petition under 37 CFR 1.55(c), filed October 25, 2004, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of a prior-filed foreign application; namely, Great Britain foreign Application No. 0104781.9, filed February 27, 2001.

The petition is again **dismissed**.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be included either in **an oath or declaration (37 CFR 1.63(c)(2))** or in **an Application Data Sheet (37 CFR 1.76(b)(6))**;
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional. (The Commissioner may require additional information where there is a question whether the delay was unintentional.); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The instant petition still fails to comply with item (2) above, as set out in the decision mailed July 15, 2004 dismissing the first petition under 37 CFR 1.55(c).

The decision of July 15, 2004 stated that the petition could not be granted since it failed to include an oath or declaration or an Application Data Sheet (ADS) in accordance with 37 CFR 1.76(b)(6) which sets forth therein the claim for foreign priority. The renewed petition was not accompanied by either an oath or declaration complying with 37 CFR 1.63(c)(2) or 37 CFR 1.76(b)(6). Instead, the instant renewed petition was accompanied by a "Declaration Under 37 CFR 1.131." The declaration under 37 CFR 1.131 also requests that the Office amend the instant application to include a reference to the foreign priority claim. However, neither the submission of a declaration under 37 CFR 1.131 nor a request to amend the application is a proper reference for claiming priority to a foreign application. Unless provided in an application data sheet, 37 CFR 1.63(c)(2) requires that the oath or declaration must identify the foreign application for patent or inventor's certificate for which priority is claimed under 37 CFR 1.55, and any foreign applications having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing. *Note* MPEP 201.14, page 200-77 (Rev. 2, May 2004), last paragraph, second column.

In view of the above, compliance with 37 CFR 1.63(c)(2) or 37 CFR 1.76(b)(6) must be satisfied if applicant desires to claim priority to Great Britain foreign Application No. 0104781.9. Any future petition should include a cover letter and be entitled "Renewed Petition under 37 CFR 1.55(c)."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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Any questions concerning this matter may be directed to the undersigned at (571) 3218.



Frances Hicks
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for Patent Examination Policy